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**REMARKS**

Claims 1-23 are currently pending in the subject application and are presently under consideration. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

**I. Rejection of Claim 22 Under 35 U.S.C. §101**

Claim 22 stands rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Withdrawal of this rejection is requested for at least the following reasons. Claim 22 produces a useful, concrete and tangible result.

Because the claimed process applies the Boolean principle [abstract idea] *to produce a useful, concrete, tangible result* ... on its face the claimed process comfortably falls within the scope of §101. *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358. (Fed. Cir. 1999) (Emphasis added); *See State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601 (Fed.Cir.1998). The inquiry into patentability requires an examination of the contested claims to see if the claimed subject matter, as a whole, is a disembodied mathematical concept representing nothing more than a "law of nature" or an "abstract idea," or if the mathematical concept has been *reduced to some practical application rendering it "useful."* *AT&T* at 1357 citing *In re Alappat*, 33 F.3d 1526, 31 1544, 31 U.S.P.Q.2D (BNA) 1545, 1557 (Fed. Cir. 1994) (emphasis added).

In the subject Office Action, the Examiner asserts, without providing a rationale for rejecting the subject claim, that the claim is merely programming instructions or merely data. Applicants' representative contends that a conclusory assertion alone does not meet the sufficiency of the Examiner's burden with respect to this rejection, and thus it is submitted, the Examiner has failed to set forth *prima facie* grounds to substantiate the rejection under 35 U.S.C. §101 with respect to this claim.

Further, according to *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999), the legal standard set forth by the Federal circuit for determining whether claims are directed towards statutory subject matter is whether the claims can be applied in a practical application to produce a useful, concrete and tangible result. The subject claim clearly meets the aforementioned legal standard. Independent claim 22

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recites *a data packet adapted to be transmitted between at least two processes comprising an interactive component to motivate consumers to provide information input and an analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics*. Thus, claim 22 recites independent acts (transmitting a data packet between at least two computer processes) that facilitate the acquisition of information from a consumer by dynamically providing feedback to an interactive component based on consumer input. Transmitting a data packet between at least two computer processes certainly constitutes an independent act, the result of which is the production of a concrete, tangible and useful result – namely, the transmission of meaningful consumer data captured by a dynamic and responsive consumer information system. The stipulations related to the product of the acts (*i.e.* useful, concrete, and tangible) are clearly satisfied, as the consumer data contained in the transmission is used to determine the demographics of consumers, which is a useful, concrete, and tangible result.

Additionally, the Court of Appeals for the Federal Circuit stated in *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325 (Fed. Cir. 2005):

Title 35, section 101, explains that an invention includes "any new and useful process, machine, manufacture or composition of matter." ... Without question, *software code alone qualifies as an invention eligible for patenting under these categories*, at least as processes. *Id.* at 1338 (emphasis added).

The subject claim is clearly within the scope of software code comprising, *an interactive component to motivate consumers to provide information input and an analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics* encapsulated in a data packet that is subsequently transmitted from one computer process to another computer process. As a result, the components therein can facilitate the dynamic and adaptive aggregation of consumer information. The fact that (i) the data packet that encases the software code during its transmission between two processes, or (ii) the data packet is transmitted as a communication signal between two processes is irrelevant to the fact that

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it is software code that is contained therein and is being transmitted through utilization of a communication signal. Accordingly, the relevant points are that that software code is being transmitted within the data packet and that the software code so transmitted produces a useful, concrete and tangible result.

In view of at least the foregoing, it is apparent that the subject claim sets forth a useful, concrete and tangible result, and accordingly, this rejection should be withdrawn.

## **II. Rejection of Claim 23 Under 35 U.S.C. §101**

Claim 23 stands rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Claim 23 produces a useful, concrete and tangible result.

The subject Office Action states that claim 23 is merely data without providing a rationale for the rejection under 35 U.S.C. §101. In the Office Action, the Examiner has clearly failed to set forth a *prima facie* case to substantiate the rejection of independent claim 23, and as a consequence has failed to satisfy the sufficiency of his burden in this regard. Further, independent claim 23 recites *a computer readable medium having stored thereon a data structure*, which alone provides more than sufficient substantiation to characterize the data structure as being "functional descriptive material" recorded on computer readable media such that the data structure becomes structurally and functionally interrelated with the media and thus statutory for the purposes of 35 U.S.C. §101. See MPEP §2106(IV)(B)(1). Additionally, the subject claim recites that the data structure is not only stored on the computer readable media but is also utilized to load configurable data elements into a software program, and the use of such a data structure by a software program certainly satisfies the legal requirements. The software program uses the data structure to produce a useful, concrete, and tangible result, as the data fields within the data structure allow the system to make determinations regarding the data and the consumers providing the data to the system. Accordingly, the legal requirement set forth by the Federal Circuit in *AT&T Corp. v. Excel Communications, Inc.* has clearly been satisfied.

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In view of at least the foregoing, it is apparent that applicants' claimed invention produces a useful, concrete and tangible result pursuant to *AT&T Corp. v. Excel Communications, Inc.* Accordingly, this rejection should be withdrawn with respect to independent claims 23 and claims that depend there from.

### **III. Rejection of Claims 1-23 Under 35 U.S.C. §102(e)**

Claims 1-23 stand rejected under 35 U.S.C. §102(e) as being anticipated by Nanos *et al.* (U.S. Patent No. 6,381,744). It is respectfully requested that this rejection be withdrawn for at least the following reason. Nanos *et al.* does not teach or suggest each and every aspect of the claimed invention.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that "***each and every element*** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

The claimed invention relates to a system that enables cost-effective gathering and retrieval of consumer information that can be used for marketing or research purposes. More particularly, independent claims 1, 21, and 22 recite similar limitations, namely ***a system providing automatic generation and retrieval of consumer information, comprising an analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics.*** Nanos *et al.* is silent with regard to such novel aspects.

Nanos *et al.* discloses an automated survey kiosk that displays survey questions for consumers and generates survey records based on the responses provided by consumers to those questions. It is incorrectly contended that the language selection menu disclosed in the reference is equivalent to the adaptation of the system based on demographic information. The information provided by the user in the way of a preferred language is not designed to determine demographic information about the consumer, but rather serves solely to facilitate the interaction between the system and the consumer in the manner that is easiest for the consumer. (*See* col. 9, lines 17-25). This

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approach is markedly different from that of the claimed invention, where the demographic information gathered by the system is used to make determinations about the *demographics of consumers*, which enhances the overall utility of the research data as a whole. Simply using the information to alter interaction with the consumer clearly does not teach or suggest actually determining *demographics of consumers based on the information input*.

Even if it is incorrectly assumed that the reference does disclose the limitations of the claimed invention with regard to the demographic information, the reference does not disclose the use of demographic data to provide *feedback to the interactive component based upon profiles associated with the information input and demographics*. The reference is limited to adjusting the order of the questions in the survey in order to reduce error in the survey data. The adjustment of the question order is not a result of a particular input to the system by a consumer engaging in the survey at a kiosk, but rather is a result of a "rotation" performed within the system to eliminate bias. (See col. 9, line 66 – col. 10 line 22). As shown in the instant specification, the claimed invention, however, uses the *information input and demographics* of the consumer to adjust the set and order of questions being posed to the consumer in order to aggregate more relevant and accurate information regarding the consumer. (See e.g. page 8, lines 23-27). The claimed invention, thus, distinguishes between the *information input and demographics*, but uses both to provide *feedback to the interactive component*. This approach is markedly different from that of the reference, in that the actual content of the survey could vary between consumers who interact with the survey system. Consequently, Nanos *et al.* is silent with regard to an *analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics*.

Furthermore, independent claims 12 and 20 recite similar limitations, namely *data mining the database to retrieve information associated with the information provider*. Nanos *et al.* does not disclose such novel aspects of the claimed invention. Rather, the reference is limited to *storing* the survey results in a database at a location other than that of the kiosk system itself. In the portion of the reference cited by the Examiner, the kiosk

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system transmits and stores survey data in a standard format from where the client can retrieve and analyze the data. (See col. 11, lines 28-30). However, the system itself does not perform any steps to analyze the data or perform any method of *data mining* on the survey results, as that procedure is left to the client who is requesting the information. The idea of data mining, in general, is to discover traits and “meta” information about the data set that is not apparent when looking at data points individually. The system disclosed by the reference transfers the data to a database for storage but does not perform any such analysis steps that resemble a *data mining* procedure. Consequently, the reference is silent with regard to *data mining the database to retrieve information associated with the information provider*.

In view of at least the foregoing, it is readily apparent that Nanos *et al.* does not teach or suggest each and every aspect of independent claims 1, 12, 20, 21, 22, and 23 (and claims 2-11 and 13-19 that depend there from). Therefore, this rejection should be withdrawn.

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CONCLUSION

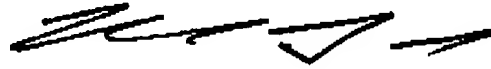
The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [IGPP101USA].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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